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19 MAY 1976

MEMORANDUM FOR: General Counsel

FROM : Robert W. Gambino
Director of Security

SUBJECT : Proposed Revision of EO 10450

1. This Office recently furnished your Office with a recent draft revision of EO 10450, which was prepared by a subcommittee of "Project 10" (an organization which had its origin in the Domestic Council in early 1975 and whose membership today consists of a representative of the Domestic Council Committee on the Right of Privacy and nine (9) other agencies and departments).

2. At that time, [redacted] of your Office was also verbally advised of the limited, informal involvement of this Office in the revision of EO 10450.

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3. The draft revision in question is the sixth (6th) considered by the committee. While we understand that there is still a lack of consensus among the committee, we also understand that it is the desire of the Domestic Council Committee on the Right of Privacy to refer the matter to the Office of Management and Budget for formal coordination with the various departments and agencies of the Executive Branch.

4. We understand that the Civil Service Commission has reservations concerning the inclusion and use of the last draft of procedures relating to the termination of employees based on the Act of 26 August 1950 (5 U.S.C. 1970 ed. 7501 et seq.). We are unable to predict at this time if another draft will be submitted by the Project 10 Committee. In any event, based on our review of the last three drafts, it appears that the final draft will contain several items that are of concern to this Office.

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5. Before setting out these specific items, I would like to invite your attention to the exemption for the Agency as set forth in Section 3(b) of the last draft which was forwarded to your Office. It would appear that the committee intends that this exemption be limited to our Investigation and Security Adjudication Program only. This exemption first appeared in the fifth (5th) draft in somewhat broader language which excluded the CIA's personnel security suitability and adjudication program from Civil Service Commission "regulations, guidelines, and oversight, and from the provisions of this Order which conflict with procedures or requirements of a program operating under statutes or other Executive Order."

6. We realize that some, if not all, of the following items that may appear to be beyond the scope of the CIA exemption as it appears in the last draft may nevertheless still not be binding upon the Agency, because they may be inconsistent with the Director's statutory authority or that conferred upon him by Executive Order 11905. Your opinion and assistance is solicited in this matter in order that we can avoid future problems and/or potential embarrassment for the Agency.

7. Section 6(c) of the draft would give the DCI the authority to designate "Positions of Special Trust." As you are aware, the former DCI, by memorandum dated 29 May 1953 to the Chairman of the Civil Service Commission, designated all "regular positions in the Central Intelligence Agency" as sensitive positions within the meaning of EO 10450. It is believed that all staff positions of the Agency would have to be designated and certified as "Positions of Special Trust." In this connection, it is noted that Section 6(c) (2)(ii) requires an annual certification of the validity of the designation of such positions to the Civil Service Commission.

8. Section 7(f)(2) of the draft requires written notice to the individual prior to the initiation of any investigation. Compliance with this section would not be possible in most of our covert investigations and would create serious cover problems in others because of the cover mechanisms utilized by this Office in the conduct of investigations. This requirement probably falls within the exclusion referred to above, if not, it is believed that we would be exempted from same by virtue of it being inconsistent with the language of Section 4(b)(8) of EO 11905. It is acknowledged that privacy matters contained in Section 7(f)(2) should properly be included in a statement furnished to all staff applicants.

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9. Similar to the above, Section 8(e) requires that "the individual shall be informed of the completion of any investigation conducted pursuant to this Order and shall be informed of the final suitability determination." We believe that we would be exempt from the above based on the reasoning as set forth in the above paragraph.

10. We do not believe that we could comply with the language in Section 9(b) for cover and security reasons. Prior to our receipt of the last draft, we were advised by a representative of the Civil Service Commission that such requirement was intended to apply to the "competitive service" only, and that CIA would therefore be exempted. It is noted, however, that the language in the last draft has been changed to include both the "competitive or excepted service." I believe that it is absolutely essential that action be taken to ensure that we are exempted from compliance with this section, unless your Office is certain that we are already exempted therefrom.

11. As indicated above, we understand that the Civil Service Commission's principal objection to this latest draft involves the language in Section 10, which is based on the Act of 26 August 1950. In this connection, your attention is invited to the applicable provisions of

25X1A [] It is believed that we would be exempt from the procedural requirements of Section 10(a) and Section 10(b) including affording the subject of an adverse action an opportunity to be represented by counsel and the opportunity of cross-examination, as a result of the DCI's authority under Section 102(c) of the National Security Act of 1947. Nevertheless, in view of the current emphasis on due process, if and when EO 10450 is revised, it is believed that [] will also have to be revised.

25X1A 12. Section 13(d)(i) would continue the EO 10450 requirement that each agency furnish the Civil Service Commission with the names of all persons who were investigated, and the names of each person whose employment was suspended or terminated. As you are aware, we were exempted from both requirements by agreement with the Civil Service Commission. It is believed that action should be taken to continue such exemption prior to the promulgation of the new Executive Order.

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13. For your information, there are other areas including the scope of investigation, etc., which do not meet our current investigative standards. We believe that we would be exempt from same based on the language in Section 3(b) and Section 4(b)(8) of EO 11905. Nevertheless, we would be affected by same inasmuch as we may not be able to accept clearances based on such investigations for access to our compartmented clearance information or for liaison approval purposes without conducting further investigation. As a practical matter, we realize that it is probably impossible to reverse this trend which was started several years ago by the Civil Service Commission. We, of course, will continue to monitor this development and adjust our procedures accordingly.

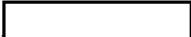
14. Your expeditious attention to this matter will be appreciated.

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Robert W. Gambino

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